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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA *E-FILED - 10/18/06*

19 SAN JOSE DIVISION

20 GEORGE T. BARCHESKI, Derivatively on
21 Behalf of Nominal Defendant BEA SYSTEMS,
22 INC.,

23 Plaintiff,

24 v.

25 WILLIAM T. COLEMAN, III, EDWARD W.
26 SCOTT, JR., MATTHEW S. GREEN, JOSEPH
27 H. MENARD, BARBARA J. BRITTON,
28 DEBORAH STANLEY, ALFRED S.
CHUANG, SAM CECE, ROBERT A. SHIPP,
WILLIAM M. KLEIN, IVAN M. KOON, TOD
NIELSEN, THOMAS M. ASHBURN,
STEWART GROSS, DEAN O. MORTON and
WILLIAM H. JANEWAY,

Defendants,

and,

BEA SYSTEMS, INC.,

Nominal Defendant.

Case No. C06-4459 RMW

**CORRECTED STIPULATION AND
~~PROPOSED~~ ORDER
CONSOLIDATING CASES FOR ALL
PURPOSES, AND SETTING
SCHEDULE FOR FILING OF
CONSOLIDATED COMPLAINT**

CATHERINE MOLNER, Derivatively on
Behalf of Nominal Defendant BEA SYSTEMS,
INC.,

Plaintiff,

v.

WILLIAM T. COLEMAN, III, EDWARD W.
SCOTT, JR., MATTHEW S. GREEN, JOSEPH
H. MENARD, BARBARA J. BRITTON,
DEBORAH STANLEY, ALFRED S.
CHUANG, SAM CECE, ROBERT A. SHIPP,
WILLIAM M. KLEIN, IVAN M. KOON, TOD
NIELSEN, THOMAS M. ASHBURN,
STEWART GROSS, DEAN O. MORTON and
WILLIAM H. JANEWAY,

Defendants,

and,

BEA SYSTEMS, INC.,

Nominal Defendant.

Case No. C06-05470 JW

1 WHEREAS, the Plaintiffs in the above-captioned actions filed complaints alleging similar
2 claims against the same Defendants;

3 WHEREAS, the above-captioned actions arise out of the same transactions and occurrences
4 and involve the same or substantially similar issues of law and fact; and, therefore, should be
5 consolidated for all purposes under Federal Rule of Civil Procedure 42(a).

6 IT IS STIPULATED AND AGREED by Plaintiffs and Defendants, through their respective
7 counsel of record, as follows:

8 I. CONSOLIDATION OF ACTIONS

9 1. The above-captioned actions are consolidated for all purposes under the following
10 caption, and shall be assigned the case number from the first-filed action.

11 2. The caption of these consolidated actions shall be "*In re BEA Systems, Inc.*
12 *Derivative Litigation*" and the files of these consolidated actions shall be maintained in one file
13 under Master File No. C-06-4459 (RMW). Any other actions now pending or later filed in this
14 Court which arise out of or are related to the same facts as alleged in the above-identified cases
15 shall be consolidated for all purposes, if and when they are brought to the Court's attention.

16 3. Every pleading filed in the consolidated actions, or in any separate action included
17 herein, shall bear the following caption:

18
19 In re BEA SYSTEMS, INC. DERIVATIVE
20 LITIGATION

Master File No. C-06-4459 (RMW)

21
22 4. When a pleading is intended to be applicable to all actions governed by this Order,
23 the words "All Actions" shall appear immediately after the words "This Document Relates To:" in
24 the caption set out above. When a pleading is intended to be applicable to only some, but not all,
25 of the consolidated actions, this Court's docket number for each individual action to which the
26 pleading is intended to be applicable and the abbreviated case name of said action shall appear
27 immediately after the words "This Document Relates To:" in the caption described above.
28

5. A Master Docket and a Master File hereby are established for the above consolidated proceedings and for all other related cases filed in or transferred to this Court. Separate dockets shall continue to be maintained for each of the individual actions hereby consolidated, and entries shall be made in the docket of each individual case in accordance with the regular procedures of the clerk of this Court, except as modified by this Order.

6. When a pleading is filed and the caption shows that it is applicable to "All Actions," the clerk shall file such pleading in the Master File and note such filing on the Master Docket. No further copies need be filed, and no other docket entries need be made.

7. When a pleading is filed and the caption shows that it is to be applicable to fewer than all of the consolidated actions, the clerk will file such pleading in the Master File only but shall docket such filing on the Master Docket and the docket of each applicable action.

8. When a case which properly belongs as part of *In re BEA Systems, Inc. Derivative Litigation* is filed in this Court or transferred to this Court from another court and assigned to Judge Whyte, the clerk of this Court shall:

- (a) Place a copy of this Order in the separate file for such action;
- (b) Mail to the attorneys for the plaintiff(s) in the newly-filed or transferred case a copy of this Order and direct that this Order be served upon or mailed to any new defendant(s) or their counsel in the newly-filed or transferred case; and
- (c) Make an appropriate entry on the Master Docket. This Court requests the assistance of counsel in calling to the attention of the clerk of this Court the filing or transfer of any case which properly might be consolidated as part of *In re BEA Systems, Inc. Derivative Litigation*.

II. SCHEDULE

9. Plaintiffs shall have 45 days from the entry of this Order to file and serve a Consolidated Complaint which will supersede all existing complaints filed in these actions. Defendants need not respond to any of the pre-existing complaints. Service, pursuant to Rule 4 of the Federal Rules of Civil Procedure, of any of the pre-existing complaints on any of the Defendants, or their counsel, shall constitute sufficient service on that defendant. Service shall be

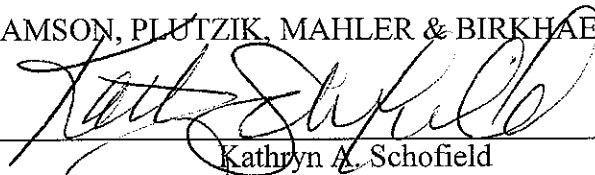
1 effected with respect to any Defendant named in any of the consolidated actions by serving the
 2 Consolidated Complaint on that Defendant's counsel.

3 10. Each Defendant shall answer or otherwise respond to the Consolidated Complaint
 4 no later than 45 days from the date of service. In the event that Defendants file and serve any
 5 motion directed at the Consolidated Complaint, Plaintiffs shall file and serve their opposition
 6 within 45 days after the service of Defendants' motion. If Defendants file and serve a reply to
 7 Plaintiffs' opposition, they will do so within 15 days after service of the opposition.

8
 9 I, Kathryn A. Schofield, am the ECF User whose identification and password are being
 10 used to file the Stipulation regarding related cases in compliance with General Order 45.X.B,
 11 hereby attest that Ignacio Salceda and Sandra Smith have concurred in this filing.

12 Dated: September 18, 2006

BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER, LLP


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19 *[Proposed] Liaison Counsel for Plaintiffs*

20
 21 Dated: September 18, 2006

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22 /s/
 23 Sandra G. Smith

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27 *[Proposed] Lead Counsel for Plaintiffs*

1 Dated: September 18, 2006

WILSON SONSINI GOODRICH & ROSATI

2
3
4 /s/

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Counsel for Nominal Defendant BEA Systems, Inc.

10 * * *

11 **ORDER**

12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13 October

14 Dated: ~~September~~ October 18, 2006

15 /s/ Ronald M. Whyte

16 UNITED STATES DISTRICT JUDGE
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